

## SBA establishes new franchise directory



Scott N. Opincar | Friday, January 19, 2018

The Small Business Administration (SBA) issued Standard Operating Procedure (SOP) 50 10 5(J), which became effective on Jan. 1, 2018. Among other changes, the SBA revised the review process for SBA 7(a) and 504 loan applicants that are or will be operating under a franchise, license, dealer, jobber, or similar agreement that meets the Federal Trade Commission (FTC) definition of a franchise.

### **SBA 504 loans**

The SBA 504 loan program provides approved small businesses with long-term, fixed-rate financing used to acquire fixed assets for expansion or modernization. 504 loans are made available through Certified Development Companies (CDCs), SBA's community based partners for providing 504 loans.

### **SBA 7(a) loans**

If a loan applicant is purchasing a business or obtaining working capital, the SBA 7(a) loan is likely the better tool. 7(a) loan proceeds can be used for short-term or long-term working capital and to purchase an existing business, refinance an existing business debt, or purchase furniture, fixtures and supplies.

### **SBA Franchise Directory**

Under the new changes, SBA lending partners and CDCs no longer have to review franchise or other brand documentation for affiliation or eligibility.

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The SBA has created and is posting a list, the SBA Franchise Directory, of all franchise and other brands reviewed by the SBA that are eligible for SBA financial assistance. There is no charge for listing on the directory.

The directory includes only those brands that the SBA has determined are eligible under SBA affiliation rules and other eligibility criteria. If the applicant's brand meets the FTC definition of a franchise, it must be on the directory in order to obtain SBA financing.

The directory will contain the following information:

- Whether the brand meets the FTC definition of a franchise.
- An SBA Franchise Identifier Code, if applicable (a code will only be issued if the agreement meets the FTC definition of a franchise).
- Whether an addendum to the franchise agreement is needed and, if so, whether the franchisor will use the SBA Addendum to Franchise Agreement (SBA Form 2462) or an SBA Negotiated Addendum (with respect to an SBA Negotiated Addendum, the Directory will list the addendum most recently negotiated with SBA, which will not be earlier than 2015).
- Whether there are additional issues the SBA lending partner must consider with respect to the brand (e.g., documentation that the business will be open to all, review of any third party management agreement to ensure the applicant is not a passive business or affiliated with the management company).

For businesses offering multiple brands, at least 51 percent of the revenue accountable to brands must be on the directory or cleared by the SBA. The CDC needs to list all brands, noting the ones that meet the 51 percent cleared on the directory.

As of Jan. 1, 2018, for applications involving a franchise or similar relationship, before submitting the application to SBA for non-delegated processing or approving the loan under delegated authority, SBA lending partners and CDCs must check the directory to determine if it includes the applicant's brand.

If the brand is on the directory, the lending partner or CDC can proceed with processing the application. If the brand is not on the directory, then the application cannot be processed. If the applicant's brand is not on the directory, the SOP sets out the procedures a franchisor must follow to request that the SBA add its brand to the directory.

Franchisors will need to send their FDD document (if they have one), agreements and documents required to be executed by the franchisees to [franchise@sba.gov](mailto:franchise@sba.gov).

Franchises listed on the directory that are cleared and CDCs can proceed with loan applications for those franchises without pre-application screening.

The SBA began accepting annual certification for the 2018 franchise agreements on Jan. 1, 2018. Certification applications can be sent to [franchisorcertification@sba.gov](mailto:franchisorcertification@sba.gov). The deadline for receipt of the certification is April 30 of each year.



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